

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

MICHAEL MACMILLER,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:07CV70-P-A

THE KROGER CORPORATION,

DEFENDANT.

FINAL JUDGMENT

This matter comes before the court upon the U.S. Magistrate Judge's Report and Recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute [56]. After due consideration of the Report, the court finds as follows, to-wit:

As stated in the Report and Recommendation, a Pretrial Conference was noticed on November 16, 2007 to take place on July 24, 2008. The notice was sent out before withdrawal of the plaintiff's second counsel and defense counsel wrote the plaintiff a letter on July 14, 2008 forwarding the defendant's version of the pretrial order and reminding the plaintiff of his obligation to provide his version of the pretrial order. The plaintiff did not appear at the pretrial conference, nor did he otherwise contact the court.

The U.S. Magistrate Judge's Report and Recommendation that this action be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b) was filed on July 24, 2008. The plaintiff had until August 7, 2008 to file an objections thereto. The plaintiff filed no objections, nor has he otherwise contacted the court.

Accordingly, the court agrees with the U.S. Magistrate Judge that the plaintiff has failed to prosecute this action and that therefore his action should be dismissed pursuant to Rule 41(b).

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) The court adopts and incorporates herein the U.S. Magistrate Judge's July 24, 2008 Report and Recommendation; therefore,

(2) The plaintiff's claims are **DISMISSED**; and

(3) This case is **CLOSED**.

SO ORDERED this the 12th day of August, A.D., 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE